UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1991/50/Add.1
30 January 1991

ENGLISH
Original: ENGLISH/SPANISH

COMMISSION ON HUMAN RIGHTS
Forty-seventh session
Agenda item 19

REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

An analytical summary of comments received by the Secretary-General on the Draft programme of action for prevention of sale of children, child prostitution and child pornography

Report of the Secretary-General

Addendum

CONTENTS

Chapter		Paragraphs	Page
I.	COMMENTS RECEIVED FROM GOVERNMENTS ON THE DRAFT PROGRAMME OF ACTION FOR PREVENTION OF SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY		
	Venezuela	1 - 25	2
II.	COMMENTS RECEIVED FROM NON-GOVERNMENTAL ORGANIZATIONS ON THE DRAFT PROGRAMME OF ACTION FOR PREVENTION OF SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY		
	Defence for Children International	26 - 57	6

GE.91-10308/2830B

READEX
FICHE

I. COMMENTS RECEIVED FROM GOVERNMENTS ON THE DRAFT PROGRAMME OF ACTION FOR PREVENTION OF SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

VENEZUELA

[Original: Spanish]
[22 January 1991]

A. General

1. We endorse and support the proposals for concerted action at the national and international levels on information, education, assistance and rehabilitation and legislative measures for the application of laws in these spheres.

2. We regard the introduction of a prevention policy as being of great importance, since the prime aim is to avert criminal acts or conduct rather than just punish them after they have happened. To that end it is very important to take measures to improve people's living conditions in the areas of nutrition, education and health and to launch well-organized information campaigns via the mass media, such as radio, television and the press, with a twofold objective: to teach children and adolescents about the dangers and risks they can run in a violent situation and about ways of avoiding and dealing with such situations and to arouse the awareness of adults so that they respect every child's fundamental right to the integrity of its own body. The same instruction should be given in compulsory primary education systems by suitable staff.

3. It is also necessary to diagnose minors exposed to sexual exploitation, to treat them in time and to bring about their rehabilitation through the use of adequate resources and an interdisciplinary team of health workers, consisting of doctors, social workers, psychiatrists and psychologists, together with judges and government procurators for minors, in order to reintegrate the child fully into society within his own family.

4. As regards legislative measures, we have some reservations about putting out information via any mass medium about minors against whom offences have been committed if it can in any way jeopardize their interests and normal development, in accordance with the prohibitions laid down in the Minors' Protection Act.

B. Sale of children

5. In view of the fact that the sale of minors, kidnapping and other similar offences may be concealed behind what seems to be an adoption, we endorse the need to introduce rules and strengthen those already in existence in order to achieve greater efficiency in preventing any action which might involve the irregular departure of our minors to other countries. Measures should be introduced which must be strictly complied with the competent authorities in order to prevent the development of different procedures from those established in the legal system, it being of fundamental importance that proper guidance should be given to parents who find themselves for one reason or another unable to exercise the rights and duties they have under the law.

6. We wholeheartedly support the provision in paragraph 20 because we do not recognize adoption procedures other than those through proper legal channels, which makes it essential that they should be dealt with by official bodies capable of protecting the well-being and integrity of minors in abnormal situations and thus trying to prevent any abuse of the spirit and purpose of adoptions, whether national or international. In fact, in Venezuela we have as a result no figures for adoptions entered into for reasons other than their proper purpose, namely, to integrate the minor into a home where he will get the full range of benefits needed for his normal, physical and emotional development. We also start from the principle that any child adopted internationally must know his ethnic origin, language and culture, as provided in the Convention on the Rights of the Child.

7. It is important to stress that our competent authorities try to take every precaution with regard to international adoptions: children are only handed over if there is a cast-iron guarantee that the adoptive parents and child will remain in the country until the procedure has been completed.

8. It should be emphasized that by the very nature and purpose of adoption we do not entertain the possibility of regarding it as a means of making money, since it is an institution intended fundamentally to serve the interests of the child.

9. We absolutely agree on the constant interaction that must be maintained with all countries in the international community in order to keep abreast of their policies, programmes and strategies, so as to monitor and prevent the corruption, abduction and illegal removal of children, with a view to developing a joint plan involving unanimous solidarity and support for the nations involved in such situations.

C. Child prostitution

10. We approve of the content of all paragraphs in this chapter from 22 to 25 inclusive. However, we consider that the draft should also deal with sexual abuse of minors, since it would then cover all three subparagraphs of article 34 of the Convention on the Rights of the Child, namely:

(a) The inducement or coercion of a child to engage in any unlawful sexual activity;

(b) The exploitative use of children in prostitution or other unlawful sexual practices;

(c) The exploitative use of children in pornographic performances and material.

The last two were covered by points C and D of the programme, but not the first, which is of particular interest in our country, since it is the main form of sexual exploitation and abuse of minors.

11. Minors are in fact subjected to all kinds of manipulation and various forms of sexual initiation for which those responsible go unpunished, since most cases are not reported, as they generally involve unconsummated rapes, i.e. sexual abuse, defined in our Penal Code as lascivious acts in which the offender does not intend to commit rape, since otherwise, if there was an intention to rape but it was not carried out, it would be described as

attempted or frustrated rape, as appropriate. Also of importance is the relationship between the victim and the offender, who often knows the minor and enjoys his confidence, since in most cases it is the father or stepfather, less often third parties known to the child and least often a stranger.

12. The factors that give rise to this very serious situation are considered to be the breakup of the family, illiteracy, unemployment, the overcrowded conditions in which most of our families live and the state of abandonment a high percentage of children are left in, surviving on their own, and for that very reason exposed to sexual abuse.

13. We also note that sexual aggression is one of the distressing events of human existence that have a severe emotional impact on the victim, above all, because subsequent findings with regard to the behaviour of those concerned revealed depression, personality disturbances, drugs, disfunctional social conduct, self-destructive feelings, suicide attempts, stress disturbances, desires for vengeance and difficulty in interpersonal relations.

14. We accordingly recommend that specialized centres should be set up to rehabilitate the minor and his family, that people in the different institutions of the community should be educated to provide genuine vigilance and support and that legislative measures should be adopted to punish the guilty, with brief proceedings at which the minors are not confronted with the offender. The children should be respected and their accusations believed, so that cases are reported and dealt with effectively by the responsible judicial authorities.

15. In all cases of sexual abuse of minors, the judicial investigation should be undertaken automatically, as a public prosecution, and should not require a complaint or accusation by the injured party or his representative, which impedes judicial action and prevents the guilty from being punished.

16. It is desirable in this connection that the Programme should envisage legislative provisions that will apply in preference to those in the codes and other national laws of the States parties on the matters with which it is concerned.

17. We are making this point because in the case of the punishable offences defined by the Venezuelan Penal Code which has been in force since 30 June 1964, in the second book, title VIII, as "Offences against Decency and the Family", proceedings are only brought on the basis of an accusation by the injured party or his legal representative, and the complaint is not admissible if a year has passed since the event occurred or since the day on which it came to the knowledge of the person who could initiate proceedings on behalf of the injured party.

D. Child pornography

18. As in the previous chapter, we wish to express our agreement with the contents of paragraphs 26, 27 and 29, while having reservations about paragraph 28, since under the Constitution of the Republic the inviolability of correspondence in all its forms is an individual right. It cannot be seized except by the judicial authorities, duly complying with the legal formalities and always maintaining confidentiality with regard to domestic and private matters that have nothing to do with the proceedings in question.

19. The Venezuelan Penal Code also identifies and punishes violation of correspondence as one of the offences constituting invasion of privacy.

20. Child pornography is fortunately not common in our country, which may be the reason why the Penal Code does not make it an offence as such. It may rather be regarded as covered by the chapter "On corrupters", always with the proviso that the corrupter is described as an individual who in order to satisfy another's passions facilitates or encourages the prostitution or corruption of a minor, which makes the characterization of the offence a very subjective matter, as regards the corrupter's intention to harm, to corrupt, which is difficult to prove in court and hence tends to mean that the guilty party gets off scot-free.

21. It is therefore necessary to go to the root of the problem by the methods indicated in the project's general considerations and to set up appropriate modern machinery with technology which will make it easier to prove the case against the offender and ensure that the full consequences follow in court.

22. As regards legislative measures, the Minors' Protection Act lays down guidelines regarding minors' individual rights, such as the right not to be exploited in their persons so that they do not suffer moral or physical ill-treatment. Under the Regulations relating to the Minors' Protection Act, exploitation of the person of the minor is considered to exist in any situation in which advantage is taken of the characteristics inherent in his age to benefit the interests of others which are contrary to the satisfactory formation of his personality or which prejudice his health or physical, psychological, moral or social development.

23. The Act also makes it illegal to admit minors to entertainments that could harm their moral development and to cinemas or similar places that are unsuitable for their age; to sell or furnish to minors or exhibit publicly printed material that can be considered contrary to morality and decency; to put out via any medium of communication programmes which encourage children to show a lack of respect for personal dignity; to give minors parts or allow them to take part in public performances and media programmes that can affect their physical or mental health, offend against morality and decency, or endanger life; to use minors in advertisements and publications of any kind which exalt vice, indecency or false values or show lack of respect for the dignity of the person.

24. Similarly, owners, directors or managers of hotels or similar establishments are forbidden to admit minors who are not duly accompanied or authorized by their legal representative or by the competent authority.

25. The third book of the Minors' Protection Act, entitled "On Minors in Irregular Situations", treats minors who are the subject of sexual exploitation as being in a state of abandonment and those employed in occupations that may be considered harmful to morality and decency or that are conducted in environments harmful to their development, their health or their life as being in a state of danger. Similarly, it lays down the judicial and extra-judicial procedure to be followed in defence of the rights of minors in irregular situations with a view to their rehabilitation and reintegration into society. The minor is accordingly protected by laws, regulations and special courts.

II. COMMENTS RECEIVED FROM NON-GOVERNMENTAL ORGANIZATIONS ON THE DRAFT PROGRAMME OF ACTION FOR PREVENTION OF SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

DEFENCE FOR CHILDREN INTERNATIONAL

[Original: English]
[20 December 1990]

26. Defence for Children International (DCI) welcomes the proposal of such a Programme of Action, and believes that, once approved by the Commission on Human Rights, it could make a useful contribution to national and international efforts to eliminate some of the most pernicious forms of exploitation of children.

27. At the same time, we feel that it might be premature and somewhat illogical to proceed with the approval of a Programme of Action in this field prior to becoming aware of the findings of the Special Rapporteur, Professor Vitit Muntarbhorn, whose mandate covers essentially the same issues and whose efforts should surely be taken into full account when determining strategies to be adopted and implemented. We would therefore urge that the Commission on Human Rights postpone any decision in this regard until the Special Rapporteur's conclusions and recommendations can be incorporated. Should the Commission on Human Rights nonetheless decide to proceed with its consideration of the draft Programme of Action, we would have a number of comments to communicate.

(a) Sale of children

28. First and foremost, in its present form, we believe that the draft Programme of Action fails to address effectively one of the important types of exploitation of children that it is designed to cover, viz. the sale of young children for purposes of adoption.

29. Sale of children for purposes of adoption differs in several ways from the sale of children for other purposes, and from sexual exploitation of children.

30. One difference lies in the motives of those most directly involved. Those who perpetuate the sexual exploitation of children, or their sale for purpose of sexual exploitation or servitude, are generally moved by unscrupulous self-interest. While the motives of intermediaries who promote the sale of children for purposes of adoption may well be similar, the motives of both the biological and adoptive parents are very often beneficient; the biological parents may believe that they are providing their child with an escape from a life with no future, and the adoptive parents are often motivated by the desire to save a child from poverty, ignorance, sickness and perhaps institutionalization and exploitation. These perceptions condition the struggle against the sale of children for purposes of adoption. No programme of action against the sale of children which fails to take them into account can be effective.

31. The age of the victims is another difference. Victims of sexual exploitation, or sale for purposes other than adoption, are typically in their teens or late pre-teens. In contrast, children sold for purposes of adoption

are often newborn babies, or at least infants too young to communicate effectively. This fact has major implications for efforts to prevent and detect this crime.

32. The rights which are violated are also different. Sexual exploitation violates the physical integrity of the child, and may cause severe psychological trauma. The principal rights violated in the sale of children for purposes of adoption are the right to identify, and the unity of the family. The restoration of these rights, in a manner compatible with the best interests of the child who has been the object of such a transaction, can be a sensitive and complex endeavour.

33. As these and other differences which cannot be elaborated here suggest, the presumption that a programme designed to combat sexual exploitation of children will also be effective against sale of children for purposes of adoption is not valid. Yet in its present form the draft Programme is almost entirely oriented towards the sexual exploitation of children.

34. DCI submitted for consideration of the 1989 Working Group on Contemporary Forms of Slavery an eight-point plan for the prevention of traffic of children for purposes of adoption. This plan was developed as a result of a two-year study undertaken jointly with the Government of Argentina. DCI believes that the various aspects of that plan are important for both international and national efforts in this sphere, and therefore attaches a slightly edited version of the document to the present memorandum. DCI regrets that only one paragraph of the draft United Nations Programme of Action (para. 20) specifically addresses traffic of children for purposes of adoption. Moreover, much of the general part of that Programme of Action (paras. 1 to 18) either refers specifically to sexual exploitation or is in practice inapplicable to traffic for purposes of adoption.

35. Paragraph 6, for example, encourages public education concerning universal ethical principles, such as physical integrity, but fails to refer to the right to identity.

36. Paragraph 7 refers to preventive educational programmes directed to children, a measure which is inapplicable to traffic for purposes of adoption.

37. Paragraph 8 refers to the special vulnerability of street children to "these practices", a generalization which is also inapplicable to traffic of children for purposes of adoption.

38. Many other examples could be cited.

39. For many years the sale of children for purposes of adoption was a largely unrecognized and poorly understood phenomenon. It was, to borrow the words of the Programme of Action, surrounded by a veil of silence. In recent years this veil of silence has begun to be lifted. The mass media have dedicated an increasing number of articles and programmes to this phenomenon, some thoughtful and others frankly sensationalistic. The international community has begun to elaborate standards: the declaration on adoption and foster care adopted by the United Nations General Assembly in 1986; various provisions of the Convention on the Rights of the Child, in particular articles 8 and 21; the ongoing work by the Hague Conference on Private International Law to formulate a Convention on Inter-country Adoption; similar work now being undertaken by the Inter-American Children's Institute. Some concerned Governments, in both countries of origin and countries of

destination, have taken urgent measures designed to control irregular adoption practices which serve to facilitate the sale of children. Yet international co-ordination is embryonic, comprehensive strategies have not yet been developed and the effectiveness of recently adopted measures remains uncertain.

40. Unfortunately, in its present form the draft Programme of Action would seem to do little to advance international efforts to address the need for stronger and more efficient action against the sale of children for purposes of adoption. Indeed, there is some danger that the slight attention given to this problem in the draft text, and the corresponding emphasis on sexual exploitation of children, might contribute to the mistaken impression that the former is not a serious human rights problem - and, in effect, perpetuate the veil of silence which public opinion and the efforts of some Governments have just begun to lift.

41. There are a number of specific points on which we would suggest changes, including the following:

42. Points 1 to 5 certainly apply to the sale of children for the purpose of adoption, but 6 to 10 and 12 to 15 should be reworded to be applicable clearly to this kind of trafficking. It must be stressed that nowhere does the draft Programme unequivocally mention the basic principle of the integrity of the family which is the very first level of protection for the child. Parents and children must be protected against unlawful separation (e.g. "Special attention should be paid to situations where the biological parents are incited to part with their child for socio-economic reasons without their full, free and informed consent"). Such situations are frequent and lead to a decision of adoption which looks perfectly legal but remains equivocal since the biological parents consented to it only under constraint.

43. Point 6. The reference to the "integrity of its own body" (N.B. "his/her" body seems preferable, and the French and English versions should coincide as far as the term "body" is concerned) is not appropriate in relation to adoption where the identity of the child is in danger of being concealed or changed even before a decision is rendered.

44. Point 7. Information should also be made available to the (future) parents and to the community, as children used in the process of (inter-country) adoption are not able to defend themselves.

45. Point 8. The number of street children who are in a position to be adopted nationally or internationally is so small that the content of point 8 hardly applies to them.

46. Point 10. The role played by health professionals, social workers, lawyers and judges in facilitating the (inter-country) adoption of children has been illustrated in various documents and statements submitted by NGOs. As far as adoption is concerned, point 10 should focus more precisely on the role they must play to avoid the sale of children and to protect them as well as the integrity of the family.

47. A further point concerns the protection of children in situations of emergency. Experience has shown that the requirements of the law may often be neglected in these cases. A supplementary point should be included such as "Governments should take all necessary measures and adopt, nationally and internationally, a plan of action designed to prevent any kind of trafficking

in children in situations of serious internal or international tensions and of natural disasters." This could help to prevent unscrupulous intermediaries from taking advantage of instability to procure children for the adoption market.

(b) Child prostitution and pornography

48. As it has been drafted, the draft Programme of Action almost exclusively addresses the question of sexual exploitation of children. As most of the measures recommended in chapter A deal with that phenomenon, chapter C has become very short and fails to encompass the overall problem of "child prostitution" since it only mentions sex tourism and the presence of foreign military bases.

49. Defence for Children International therefore proposes that the following additions be taken into consideration.

50. Point 7 and 8. Information on child prostitution and pornography should also be available for parents and the community as such, as both play an important role in protecting their children against this type of abuse.

51. Point 11. Teenage single and abandoned mothers should be mentioned in relation to their need for special protection and support to help them to abandon prostitution or not to be forced to prostitute themselves to ensure their survival and the survival of their child.

52. Point 12. The categories of children who may become victims of prostitution should be identifiable with the help of parameters which perhaps already exist. If necessary, such data should be elaborated and circulated so that the needs for protection of such children are taken into consideration in assistance programmes.

53. Point 13. Private organizations and institutions should be allowed to bring cases of sexual exploitation of children to court, to avoid lack of information, of means and/or of a legal representative (a situation which is probably common to nearly all street children) preventing them from obtaining protection and reparation.

54. Point 16. The obligation to submit reports to the Secretary-General of the United Nations on the application of the 1926, 1956 and 1949 Conventions could be usefully underlined.

55. As mentioned before, DCI regrets very much that the chapter "Child prostitution" is limited to the questions of sex tourism, the presence of foreign military bases and the use of new forms of technology. These are certainly responsible for the extension and continuation of sexual exploitation of children in certain parts of the world. But these parts are geographically very limited and children suffer sexual exploitation nearly everywhere. It should therefore be examined whether chapters A, C and D of the draft Programme of Action should not be united. If this proves impossible, DCI would like to reiterate the proposal made in August 1989, so that paragraph 22 should read:

> "Within the framework of legislative and other measures to prevent child prostitution in general, special attention should be paid to the problem of sex tourism. In this regard, such measures should be taken ...".

(c) Need for definitions

56. Finally, and for the sake of clarity, the draft Programme should give a definition of the expressions "sale of children", "child prostitution" and "child pornography", so that the wording "these practices" takes on a precise meaning. It should also mention the international legal basis which underpins the initiative to draft the Programme (viz. the 1926 Slavery Convention, the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, and the 1989 Convention on the Rights of the Child). Furthermore, it would be worthwhile determining whether the concept "traffic in children" (see paras. 14 and 19) is wider than the one of "sale of children" and, in that case, use the former throughout the draft Programme.

57. Eight-point plan to combat trafficking and sale of children for the purpose of adoption. */

(1) Develop educational campaigns in various social, cultural and scientific circles intended to re-establish the ethical values which should underpin adoption procedures. Likewise, it is necessary to do away with cultural values which have led vast sectors of some societies to tolerate and approve practices which strip the child of his or her identity. The affirmation of the right to an identity should be one of the main thrusts of action in defending and protecting children's rights.

(2) Special attention should be paid to the training of professionals in the social welfare, health and legal fields, with particular reference to the trafficking and sale of children, in order to avoid them becoming involved in this practice in the exercise of their professional duties.

(3) Organize national and regional campaigns which meet the specific needs of different cultures and which aim at strengthening the systems which hold the family and the community together.

(4) Review current legislation in order to ensure effective legal prevention at the various levels at which trafficking and sale is organized. Such legislation should establish greater possibilities for building up ties between the child and his or her biological family and should penalize any activity which turns the child into an object of trafficking and sale.

(5) Enhance mechanisms for protecting and supporting mothers who are alone, especially those who are under age and who come from sectors of society which, economically, are highly vulnerable. In this respect, it is proposed that new welfare models be developed which focus on community involvement and on promoting the self-reliance of the mothers themselves.

---

*/ Edited extract from "Trafficking and Sale of Children in Argentina", the report of an investigation carried out by an International Commission of Experts convened by DCI, in association with the Ministry of Health and Social Welfare of the Republic of Argentina (DCI, Geneva, June 1989).

(6) International co-operation is needed in order to generate intergovernmental initiatives against the trafficking and sale of children.

(7) In any given country, it is vital that forms of governmental co-operation be introduced which encompass the various jurisdictions and spheres of competence in order to avoid overlapping or dispersal of efforts.

(8) It is suggested that national authorities undertake studies to explore in detail aspects of trafficking and sale which relate to legal standards and the administration of justice.